

FIRST REGULAR SESSION

SENATE BILL NO. 429

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR GIBBONS.

Read 1st time February 1, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

0635S.011

AN ACT

To repeal sections 191.225, 565.072, 595.030, 595.209, RSMo, and to enact in lieu thereof seven new sections relating to crime victims, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 191.225, 565.072, 595.030, 595.209, RSMo, are
2 repealed and seven new sections enacted in lieu thereof, to be known as sections
3 191.225, 455.003, 565.072, 566.224, 566.226, 595.030, 595.209, to read as follows:

191.225. 1. The department of health and senior services shall make
2 payments to [hospitals and physicians] **appropriate medical providers**, out
3 of appropriations made for that purpose, to cover the [cost] **charges** of the
4 [medical] **forensic** examination [not covered by insurance, Medicare or Medicaid]
5 of persons who may be a victim of [the crime of rape as defined in section
6 566.030, RSMo, or a victim of a crime as defined in chapter 566, RSMo, or
7 sections 568.020, 568.050, 568.060, 568.080, 568.090, 568.110, and 568.175,
8 RSMo,] **a sexual offense** if:

9 (1) The victim or the victim's guardian consents in writing to the
10 examination;

11 (2) The report of the examination is made on a form approved by the
12 attorney general with the advice of the department of health and senior services;
13 and

14 (3) The report of the examination is filed [by the victim] with the
15 prosecuting attorney of the county in which the alleged incident occurred.

16 **The appropriate medical provider shall file the report of the**
17 **examination within seventy-two hours of completion of the forensic**
18 **exam.**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 2. A minor may consent to examination under this section. Such consent
20 is not subject to disaffirmance because of minority, and consent of parent or
21 guardian of the minor is not required for such examination. The [hospital or
22 physician] **appropriate medical provider** making the examination shall give
23 written notice to the parent or guardian of a minor that such an examination has
24 taken place.

25 3. The attorney general, with the advice of the department of health and
26 senior services, shall develop the forms and procedures for gathering evidence
27 **during the forensic examination** under the provisions of this section [and
28 shall furnish every hospital and physician in this state with copies of such forms
29 and procedures.

30 4. Reasonable hospital and physicians]. **The department of health
31 and senior services shall develop a checklist for appropriate medical
32 providers to refer to while providing medical treatment to victims of
33 a sexual offense.**

34 4. Evidentiary collection kits shall be developed and made
35 available, subject to appropriation, to appropriate medical providers
36 by the highway patrol or its designees and eligible crime
37 laboratories. Such kits shall be distributed with the forms and
38 procedures for gathering evidence during forensic examinations of
39 victims of a sexual offense to appropriate medical providers upon
40 request of the provider, in the amount requested, and at no charge to
41 the medical provider. All appropriate medical providers shall, with the
42 consent of the victim, perform a forensic examination using the
43 evidentiary collection kit and forms and procedures for gathering
44 evidence and administer medical treatment following the checklist for
45 any person presenting as a victim of a sexual offense.

46 5. All **appropriate medical provider** charges for eligible forensic
47 examinations shall be billed to and paid by the department of health and senior
48 services. **No appropriate medical provider conducting forensic
49 examinations and providing medical treatment to victims of sexual
50 offenses shall charge the victim for the forensic examination. For
51 appropriate medical provider charges related to the medical treatment
52 of victims of sexual offenses, if the victim is an eligible claimant under
53 the crime victims' compensation fund, the appropriate medical provider
54 shall seek compensation under sections 595.010 to 595.075, RSMo.**

55 **6. For purposes of this section, the following terms mean:**

56 **(1) "Appropriate medical provider", any licensed nurse,**
57 **physician, or physician assistant, and any institution employing**
58 **licensed nurses, physicians, or physician assistants; provided that such**
59 **licensed professionals are the only persons at such institution to**
60 **perform tasks under the provisions of this section;**

61 **(2) "Evidentiary collection kit", a kit used during a forensic**
62 **examination that includes materials necessary for appropriate medical**
63 **providers to gather evidence in accordance with the forms and**
64 **procedures developed by the attorney general for forensic**
65 **examinations;**

66 **(3) "Forensic examination", an examination performed by an**
67 **appropriate medical provider on a victim of an alleged sexual offense**
68 **to gather evidence for the evidentiary collection kit;**

69 **(4) "Medical treatment", the treatment of all injuries and health**
70 **concerns resulting directly from a patient's sexual assault or**
71 **victimization.**

455.003. 1. In order to qualify to receive state funds, a rape crisis
2 **center shall:**

3 **(1) Require persons employed by or volunteering services to the**
4 **rape crisis center to maintain confidentiality of any information that**
5 **would identify individuals served by the center and any information or**
6 **records that are directly related to the advocacy services provided to**
7 **such individuals; and**

8 **(2) Prior to providing any advocacy services, inform individuals**
9 **served by the rape crisis of the nature and scope of the confidentiality**
10 **requirements of subdivision 1 of this subsection.**

11 **2. Any person employed by or volunteering services to a rape**
12 **crisis center for victims of sexual assault, as defined in section 455.010,**
13 **shall be incompetent to testify concerning any confidential information**
14 **in subsection 1 of this section, unless the confidentiality requirements**
15 **is waived in writing by the individual served by the center.**

16 **3. As used in this section, the term "rape crisis center" shall mean**
17 **any public or private agency that offers assistance to victims of sexual**
18 **assault, as the term "sexual assault" is defined in section 455.010.**

565.072. 1. A person commits the crime of domestic assault in the first
2 **degree if he or she attempts to kill or knowingly causes or attempts to cause**

3 serious physical injury to a family or household member or an adult who is or has
4 been in a continuing social relationship of a romantic or intimate nature with the
5 actor, as defined in section 455.010, RSMo.

6 2. Domestic assault in the first degree is a class B felony unless in the
7 course thereof the actor inflicts serious physical injury on the victim **or has**
8 **previously pleaded guilty to or been found guilty of committing this**
9 **crime**, in which case it is a class A felony.

566.224. No prosecuting or circuit attorney, peace officer, or
2 employee of a law enforcement agency shall request or require a victim
3 of sexual assault under section 566.040, RSMo, or forcible rape under
4 section 566.030, RSMo, to submit to any polygraph test or psychological
5 stress evaluator exam.

566.226. 1. After August 28, 2007, any information contained in
2 any court record that could be used to identify or locate any victim of
3 sexual assault or forcible rape shall be closed and redacted from such
4 record prior to disclosure to the public. Identifying information shall
5 include the name, address, telephone number, social security number,
6 physical characteristics, or any other information the court reasonably
7 believes could be used in identifying or locating such victim.

8 2. If the court determines that a person or entity who is
9 requesting identifying information of a victim has a legitimate interest
10 in obtaining such information, the court may allow access to the
11 information, but only if the court determines that disclosure to the
12 person or entity would not compromise the welfare or safety of such
13 victim.

595.030. 1. No compensation shall be paid unless the claimant has
2 incurred an out-of-pocket loss of at least fifty dollars or has lost two continuous
3 weeks of earnings or support from gainful employment. "Out-of-pocket loss" shall
4 mean unreimbursed or unreimbursable expenses or indebtedness reasonably
5 incurred:

6 (1) For medical care or other services, including psychiatric, psychological
7 or counseling expenses, necessary as a result of the crime upon which the claim
8 is based, except that the amount paid for psychiatric, psychological or counseling
9 expenses per eligible claim shall not exceed two thousand five hundred dollars;
10 **or**

11 (2) As a result of personal property being seized in an

12 **investigation by law enforcement.**

13 2. No compensation shall be paid unless the division of workers'
14 compensation finds that a crime was committed, that such crime directly resulted
15 in personal physical injury to, or the death of, the victim, and that police records
16 show that such crime was promptly reported to the proper authorities. In no case
17 may compensation be paid if the police records show that such report was made
18 more than forty-eight hours after the occurrence of such crime, unless the division
19 of workers' compensation finds that the report to the police was delayed for good
20 cause. If the victim is under eighteen years of age such report may be made by
21 the victim's parent, guardian or custodian; by a physician, a nurse, or hospital
22 emergency room personnel; by the division of family services personnel; or by any
23 other member of the victim's family. **In the case of a sexual offense, filing**
24 **a report of the offense to the proper authorities shall include, but not**
25 **be limited to, the filing of the report of the forensic examination by the**
26 **appropriate medical provider, as defined in section 191.225, RSMo, with**
27 **the prosecuting attorney of the county in which the alleged incident**
28 **occurred.**

29 3. No compensation shall be paid for medical care if the service provider
30 is not a medical provider as that term is defined in section 595.027, and the
31 individual providing the medical care is not licensed by the state of Missouri or
32 the state in which the medical care is provided.

33 4. No compensation shall be paid for psychiatric treatment or other
34 counseling services, including psychotherapy, unless the service provider is a:

35 (1) Physician licensed pursuant to chapter 334, RSMo, or licensed to
36 practice medicine in the state in which the service is provided;

37 (2) Psychologist licensed pursuant to chapter 337, RSMo, or licensed to
38 practice psychology in the state in which the service is provided;

39 (3) Clinical social worker licensed pursuant to chapter 337, RSMo; or

40 (4) Professional counselor licensed pursuant to chapter 337, RSMo.

41 5. Any compensation paid pursuant to sections 595.010 to 595.075 for
42 death or personal injury shall be in an amount not exceeding out-of-pocket loss,
43 together with loss of earnings or support from gainful employment, not to exceed
44 two hundred dollars per week, resulting from such injury or death. In the event
45 of death of the victim, an award may be made for reasonable and necessary
46 expenses actually incurred for preparation and burial not to exceed five thousand
47 dollars.

48 6. Any compensation for loss of earnings or support from gainful
49 employment shall be in an amount equal to the actual loss sustained not to
50 exceed two hundred dollars per week; provided, however, that no award pursuant
51 to sections 595.010 to 595.075 shall exceed twenty-five thousand dollars. If two
52 or more persons are entitled to compensation as a result of the death of a person
53 which is the direct result of a crime or in the case of a sexual assault, the
54 compensation shall be apportioned by the division of workers' compensation
55 among the claimants in proportion to their loss.

56 7. The method and timing of the payment of any compensation pursuant
57 to sections 595.010 to 595.075 shall be determined by the division.

595.209. 1. The following rights shall automatically be afforded to victims
2 of dangerous felonies, as defined in section 556.061, RSMo, victims of murder in
3 the first degree, as defined in section 565.020, RSMo, victims of voluntary
4 manslaughter, as defined in section 565.023, RSMo, and victims of an attempt to
5 commit one of the preceding crimes, as defined in section 564.011, RSMo; and,
6 upon written request, the following rights shall be afforded to victims of all other
7 crimes and witnesses of crimes:

8 (1) For victims, the right to be present at all criminal justice proceedings
9 at which the defendant has such right, including juvenile proceedings where the
10 offense would have been a felony if committed by an adult, even if the victim is
11 called to testify or may be called to testify as a witness in the case;

12 (2) For victims, the right to information about the crime, as provided for
13 in subdivision (5) of this subsection;

14 (3) For victims and witnesses, to be informed, in a timely manner, by the
15 prosecutor's office of the filing of charges, preliminary hearing dates, trial dates,
16 continuances and the final disposition of the case. Final disposition information
17 shall be provided within five days;

18 (4) For victims, the right to confer with and to be informed by the
19 prosecutor regarding bail hearings, guilty pleas, pleas under chapter 552, RSMo,
20 or its successors, hearings, sentencing and probation revocation hearings and the
21 right to be heard at such hearings, including juvenile proceedings, unless in the
22 determination of the court the interests of justice require otherwise;

23 (5) The right to be informed by local law enforcement agencies, the
24 appropriate juvenile authorities or the custodial authority of the following:

25 (a) The status of any case concerning a crime against the victim, including
26 juvenile offenses;

27 (b) The right to be informed by local law enforcement agencies or the
28 appropriate juvenile authorities of the availability of victim compensation
29 assistance, assistance in obtaining documentation of the victim's losses, including,
30 but not limited to and subject to existing law concerning protected information
31 or closed records, access to copies of complete, unaltered, unedited investigation
32 reports of motor vehicle, pedestrian, and other similar accidents upon request to
33 the appropriate law enforcement agency by the victim or the victim's
34 representative, and emergency crisis intervention services available in the
35 community;

36 (c) Any release of such person on bond or for any other reason;

37 (d) Within twenty-four hours, any escape by such person from a municipal
38 detention facility, county jail, a correctional facility operated by the department
39 of corrections, mental health facility, or the division of youth services or any
40 agency thereof, and any subsequent recapture of such person;

41 (6) For victims, the right to be informed by appropriate juvenile
42 authorities of probation revocation hearings initiated by the juvenile authority
43 and the right to be heard at such hearings or to offer a written statement, video
44 or audio tape, **or a statement by counsel or a representative designated**
45 **by the victim** in lieu of a personal appearance, the right to be informed by the
46 board of probation and parole of probation revocation hearings initiated by the
47 board and of parole hearings, the right to be present at each and every phase of
48 parole hearings [and], the right to be heard at probation revocation and parole
49 hearings or to offer a written statement, video or audio tape in lieu of a personal
50 appearance, **and the right to have, upon written request of the victim, a**
51 **partition set up in the probation or parole hearing room in such a way**
52 **that the victim is shielded from the view of the probationer or parolee,**
53 and the right to be informed by the custodial mental health facility or agency
54 thereof of any hearings for the release of a person committed pursuant to the
55 provisions of chapter 552, RSMo, the right to be present at such hearings, the
56 right to be heard at such hearings or to offer a written statement, video or audio
57 tape, **or a statement by counsel or a representative designated by the**
58 **victim** in lieu of personal appearance;

59 (7) For victims and witnesses, upon their written request, the right to be
60 informed by the appropriate custodial authority, including any municipal
61 detention facility, juvenile detention facility, county jail, correctional facility
62 operated by the department of corrections, mental health facility, division of

63 youth services or agency thereof if the offense would have been a felony if
64 committed by an adult, postconviction or commitment pursuant to the provisions
65 of chapter 552, RSMo, of the following:

66 (a) The projected date of such person's release from confinement;

67 (b) Any release of such person on bond;

68 (c) Any release of such person on furlough, work release, trial release,
69 electronic monitoring program, or to a community correctional facility or program
70 or release for any other reason, in advance of such release;

71 (d) Any scheduled parole or release hearings, including hearings under
72 section 217.362, RSMo, regarding such person and any changes in the scheduling
73 of such hearings. No such hearing shall be conducted without thirty days'
74 advance notice;

75 (e) Within twenty-four hours, any escape by such person from a municipal
76 detention facility, county jail, a correctional facility operated by the department
77 of corrections, mental health facility, or the division of youth services or any
78 agency thereof, and any subsequent recapture of such person;

79 (f) Any decision by a parole board, by a juvenile releasing authority or by
80 a circuit court presiding over releases pursuant to the provisions of chapter 552,
81 RSMo, or by a circuit court presiding over releases under section 217.362, RSMo,
82 to release such person or any decision by the governor to commute the sentence
83 of such person or pardon such person;

84 (g) Notification within thirty days of the death of such person;

85 (8) For witnesses who have been summoned by the prosecuting attorney
86 and for victims, to be notified by the prosecuting attorney in a timely manner
87 when a court proceeding will not go on as scheduled;

88 (9) For victims and witnesses, the right to reasonable protection from the
89 defendant or any person acting on behalf of the defendant from harm and threats
90 of harm arising out of their cooperation with law enforcement and prosecution
91 efforts;

92 (10) For victims and witnesses, on charged cases or submitted cases where
93 no charge decision has yet been made, to be informed by the prosecuting attorney
94 of the status of the case and of the availability of victim compensation assistance
95 and of financial assistance and emergency and crisis intervention services
96 available within the community and information relative to applying for such
97 assistance or services, and of any final decision by the prosecuting attorney not
98 to file charges;

99 (11) For victims, to be informed by the prosecuting attorney of the right
100 to restitution which shall be enforceable in the same manner as any other cause
101 of action as otherwise provided by law;

102 (12) For victims and witnesses, to be informed by the court and the
103 prosecuting attorney of procedures to be followed in order to apply for and receive
104 any witness fee to which they are entitled;

105 (13) When a victim's property is no longer needed for evidentiary reasons
106 or needs to be retained pending an appeal, the prosecuting attorney or any law
107 enforcement agency having possession of the property shall, upon request of the
108 victim, return such property to the victim within five working days unless the
109 property is contraband or subject to forfeiture proceedings, or provide written
110 explanation of the reason why such property shall not be returned;

111 (14) An employer may not discharge or discipline any witness, victim or
112 member of a victim's immediate family for honoring a subpoena to testify in a
113 criminal proceeding, **attending a criminal proceeding**, or for participating in
114 the preparation of a criminal proceeding, **or require any witness, victim, or**
115 **member of a victim's immediate family to use vacation time, personal**
116 **time, or sick leave for honoring a subpoena to testify in a criminal**
117 **proceeding, attending a criminal proceeding, or participating in the**
118 **preparation of a criminal proceeding;**

119 (15) For victims, to be provided with creditor intercession services by the
120 prosecuting attorney if the victim is unable, as a result of the crime, temporarily
121 to meet financial obligations;

122 (16) For victims and witnesses, the right to speedy disposition of their
123 cases, and for victims, the right to speedy appellate review of their cases,
124 provided that nothing in this subdivision shall prevent the defendant from having
125 sufficient time to prepare such defendant's defense. The attorney general shall
126 provide victims, upon their written request, case status information throughout
127 the appellate process of their cases. The provisions of this subdivision shall apply
128 only to proceedings involving the particular case to which the person is a victim
129 or witness;

130 (17) For victims and witnesses, to be provided by the court, a secure
131 waiting area during court proceedings and to receive notification of the date, time
132 and location of any hearing conducted by the court for reconsideration of any
133 sentence imposed, modification of such sentence or recall and release of any
134 defendant from incarceration.

135 2. The provisions of subsection 1 of this section shall not be construed to
136 imply any victim who is incarcerated by the department of corrections or any local
137 law enforcement agency has a right to be released to attend any hearing or that
138 the department of corrections or the local law enforcement agency has any duty
139 to transport such incarcerated victim to any hearing.

140 3. Those persons entitled to notice of events pursuant to the provisions of
141 subsection 1 of this section shall provide the appropriate person or agency with
142 their current addresses and telephone numbers or the addresses or telephone
143 numbers at which they wish notification to be given.

144 4. Notification by the appropriate person or agency utilizing the statewide
145 automated crime victim notification system as established in section 650.310,
146 RSMo, shall constitute compliance with the victim notification requirement of this
147 section. If notification utilizing the statewide automated crime victim notification
148 system cannot be used, then written notification shall be sent by certified mail
149 to the most current address provided by the victim.

150 5. Victims' rights as established in section 32 of article I of the Missouri
151 Constitution or the laws of this state pertaining to the rights of victims of crime
152 shall be granted and enforced regardless of the desires of a defendant and no
153 privileges of confidentiality shall exist in favor of the defendant to exclude victims
154 or prevent their full participation in each and every phase of parole hearings or
155 probation revocation hearings. The rights of the victims granted in this section
156 are absolute and the policy of this state is that the victim's rights are paramount
157 to the defendant's rights. The victim has an absolute right to be present at any
158 hearing in which the defendant is present before a probation and parole hearing
159 officer.

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